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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/815,131 | 03/31/2004 | Ralf Ehret | 13906-180001 / 2004P00204 | 9171 |
| 32864 7590 12/10/2008 FISH & RICHARDSON, P.C. PO BOX 1022 MINNEAPOLIS, MN 55440-1022 | | | EXAMINER CARDENAS NAVIA, JAIME F | |
| | | | ART UNIT 3624 | PAPER NUMBER |
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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| | | | |
|------------------------------|---|-------------------------------------|--|
| Office Action Summary | Application No. 10/815,131 | Applicant(s) EHRET ET AL. | |
| | Examiner Jaime Cardenas-Navia | Art Unit 3624 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 November 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,5-9 and 11-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,5-9 and 11-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Introduction

1. This **NON-FINAL** office action is in response to Applicant's submission filed on November 25, 2008. Claims 1, 8, 9, 11, and 13 have been amended. Claims 10 and 14 have been cancelled. No new claims have been added. Claims 1, 2, 5-9, and 11-13 are currently pending.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. **Claims 1, 2, 5-9, and 11-13 are rejected** under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 1 and 8, the final clause of "wherein scheduling the remaining portion of the requested amount of time causes the availability of the resource for the remaining portion of the requested amount of time to be greater than zero percent and less than one hundred percent," is impossible. Scheduling a portion of time will result in the availability of the resource during that portion of time to be zero, not between zero and one hundred percent. It is already clear that the remaining portion of the requested amount of time is scheduled within *the requested time period*, and whether or not availability of the resource during *the requested time*

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period is between zero and one hundred percent depends on other scheduling requests. Thus, for purposes of examination, Examiner has removed this clause from the claims.

Claim Rejections - 35 USC § 101

4. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

5. **Claims 1, 2, 5-7, and 11-13 are rejected** under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Based on Supreme Court precedent (See *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978)) and recent Federal Circuit decisions, a § 101 process must (1) be tied to another statutory class (such as a particular apparatus) or (2) transform underlying subject matter (such as an article or materials) to a different state or thing. If neither of these requirements is met by the claim, the method is not a patent eligible process under § 101.

Independent claim 1 claims a process that is not tied to another statutory class and is therefore directed to non-statutory subject matter. Examiner notes that for process claims implemented on a computer to be considered statutory, they must make clear which steps are executed on the computer and which steps are executed manually. Additionally, nominal recitations of structure, such as in the preamble, do not tie the method to another statutory class.

6. **Claims 8 and 9 are rejected** under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

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A computer program product, per se, does not fall into one of the four categories of patent eligible subject matter recited in 35 U.S.C. 101 (process, machine, manufacture, or composition of matter). Software, programming, instructions or code not claimed as embodied in computer-readable media are descriptive material per se and are not statutory because they are not capable of causing functional change in a computer. When such descriptive material is recorded on some computer-readable medium it becomes structurally and functionally interrelated to the medium and will be statutory in most cases. Furthermore, software, programming, instructions or code not claimed as being computer executable are not statutory because they are not capable of causing functional change in a computer. In contrast, when a claimed computer-readable medium encoded with a computer program defines structural and functional interrelationships between the computer and the program, and the computer is capable of executing the program, allowing the program's functionality to be realized, the program will be statutory.

For purposes of examination, the claims have been interpreted as a properly claimed computer-readable medium.

Response to Arguments

7. Applicant's arguments have been fully considered by the Examiner. In particular, Applicant argues regarding independent claims 1 and 8 that (1) neither Hedlund nor Conmy teach or suggest the new limitations. Additionally, Applicant argues that (2) all dependent claims are allowable as a result.

Regarding argument (1), it is moot in view of the new grounds of rejection.

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Regarding argument (2), it is moot in view of the new grounds of rejection.

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

9. **Claims 1, 2, 5-9, and 11-13 are rejected** under 35 U.S.C. 102(e) as being anticipated by Virta (US 2005/0065832 A1).

Regarding claim 1, Virta teaches a method comprising:

receiving a first scheduling request for a resource, the first scheduling request specifying that the resource is to be scheduled for a requested amount of time sometime within a requested time period, the requested amount of time being less than a maximum time amount that the resource is usable during the requested time period, wherein due to the first scheduling request the resource has an availability for the requested time period less than one hundred percent (par. 24, example of work undisturbed – 25%, 8AM to 5PM weekdays);

receiving a second scheduling request for the resource that refines the first scheduling request, the second scheduling request specifying that a portion of the requested amount of time is to be scheduled in a specific time slot within the requested time period (par. 22, scheduling requests for other meeting and/or required working undisturbed at certain times to meet

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deadlines, etc., are second scheduling request that specify a portion of the requested amount of time to be in a specific time slot);

scheduling in an electronic schedule the portion of the requested amount of time in the specific time slot, wherein scheduling the portion of the requested amount of time causes the availability of the resource for the specific time slot to be zero percent (par. 15, electronic schedule, par. 22, Jerome's calendar is indicated as full for the day); and

scheduling in the electronic schedule a remaining portion of the requested amount of time within the requested time period except within the specific time slot (par. 22, 23, remaining portion of "work undisturbed, - 25%" is scheduled during any free interval of time during the requested time period, defined in this example as 9AM to 5PM weekdays).

Regarding claim 2, Virta teaches wherein the resource is a person that provides a service (par. 24, service is working), a machine, a tool, or a workstation.

Regarding claim 5, Virta teaches wherein the first scheduling request specifies that the resource is to be scheduled for a predetermined number of hours within the requested time period that includes a specific date range (par. 23, example of "jog – 90 minutes, 8AM to 5PM Monday and Tuesday").

Regarding claim 6, Virta teaches wherein the second scheduling request refines the first scheduling request by requesting that a portion of the predetermined number of hours from the first scheduling request is to be scheduled for the specific time slot on a specific date within the date range (par. 22, scheduling requests for other meeting and/or required working undisturbed at certain times to meet deadlines, etc., are second scheduling request that specify a portion of the requested amount of time to be in a specific time slot).

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Regarding claim 7, Virta teaches wherein scheduling in the electronic schedule is done to determine a utilization of the resource (par. 15, 22).

Regarding claim 8, it is rejected using the same art and rationale used above for rejecting claim 1. This is because claim 8 claims a computer program product for performing the method of claim 1.

Regarding claim 9, Virta teaches wherein the executable instructions, when executed, further cause a resource planning application to receive all time slots in which the resource is usable within the requested time period (par. 12, 14, sharing, comparing, and superimposing calendars, par. 25, 26, checking a user's availability using shared calendars).

Regarding claim 11, Virta teaches receiving all time slots in which the resource is usable within the requested time period according to resource's availability information stored in a database (par. 12, 14, sharing, comparing, and superimposing calendars, par. 25, 26, checking a user's availability using shared calendars, fig. 2, database).

Regarding claim 12, Virta teaches wherein the resource's availability information is maintained as a set of time intervals in the database (par. 15, interval storage unit, fig. 4, 5, hour time intervals).

Regarding claim 13, Virta teaches referring to resource's availability information to verify that the availability of the resource for the specific time slot on the specific date is sufficient for the second scheduling request (par. 31, 32, bookings for certain privileged people can be automatic).

Conclusion

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jaime Cardenas-Navia whose telephone number is (571)270-1525. The examiner can normally be reached on Mon-Fri, 10:30AM - 7:00PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bradley Bayat can be reached on (571) 272-6704. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

December 4, 2008

/J. C./
Examiner, Art Unit 3624

/Bradley B Bayat/
Supervisory Patent Examiner, Art Unit 3624